

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
FRANK EDWARD BRUMMETT and ) CASE NO. 05-68690 JPK  
SUSAN BRUMMETT, ) Chapter 13  
 )  
Debtors. )

MEMORANDUM AND DECISION

The matter to which this decision relates was initiated by the objection of the debtors Frank Edward Brummett and Susan Brummett ("Brummett") to claim #10 of Select Portfolio Services, Inc. This objection, denominated as "Objection to Claim #10 and Counter-Claim" was filed on March 23, 2006.<sup>1</sup> By order entered on April 10, 2006, the Court ordered, pursuant to Fed.R.Bankr.P. 3007, that the contested matter arising from Brummetts' objection to Select's claim and Brummetts' counter-claim stated in that objection would be conducted as an adversary proceeding within case number 05-68690, without the separate commencement of an adversary proceeding. That order provided that Select would be deemed to be the plaintiff in the adversary proceeding with respect to claim #10; that Brummett would be deemed to be the defendant with respect to matters relating to that claim; that Brummett would be deemed to be a counter-claimant with respect to relief requested by them pursuant to Fed.R.Bankr.P. 7001(2) in relation to the security interest asserted by Select; and that Select would be deemed to be the counter-defendant with respect to the Brummetts' counter-claim. That order deemed the counter-claim asserted by Brummett to be their adversary complaint pursuant to Fed.R.Bankr.P. 7007/ Fed.R.Civ.P. 7(a), and directed Select to file an answer or other response to that counter-claim by April 28, 2006. Select's response to the counter-claim was

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<sup>1</sup> Select Portfolio Servicing, Inc. ("Select") filed an objection to confirmation of the debtors' Chapter 13 plan on January 13, 2006. By order entered on May 30, 2006, the Court suspended further proceedings with respect to the plan confirmation objection pending determination of matters relating to Brummetts' objection to Select's claim.

filed on April 28, 2006.

On May 12, 2006, the Court entered its "Order Concerning Determination of Case on a Stipulated Record". That order determined that issues would be presented to the Court "in advance of proceeding with respect to factual issues concerning the alleged forgery [of a Rider alleged by Select to be applicable to the indebtedness asserted by it against Frank Brummett] and legal issues which may arise from the determination the document was forged". That order stated the issues to be presented to the Court to be the following:

1. Are Select Portfolio Services, Inc.'s documents with respect to its asserted mortgage interests in the subject property effective to provide the creditor with an enforceable mortgage interest in that property, even if the rider challenged by the defendants/counterclaimants is determined to be forged?
2. Is the mortgage document by which Select Portfolio Services, Inc. asserts its mortgage interests in the subject property effective to provide the creditor with an enforceable mortgage interest in the subject real estate in relation to the interests of both Frank Edward Brummett and Susan Brummett as tenants by the entireties with respect to the subject property?

Based upon the parties' agreement that the facts pertinent to those issues could be presented to the Court by stipulation, the Court stated the following:

The Court thus determines that final determination in this case will be based upon the stipulated record to be filed by the parties, coupled with providing the parties with an opportunity to submit memoranda of law with respect to their contentions based upon the stipulated record.

The two issues designated above are now before the Court for determination based upon the stipulated record provided by the parties. The Court's subject matter jurisdiction is provided by 28 U.S.C. § 1334(a) and (b), by 28 U.S.C. § 157(a) and (b), and by L.R. 200.1(a) of the Rules of the United States District Court for the Northern District of Indiana. The matter now before the Court constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(C) and (K).

I. Procedural Posture of the Case/The Record Before the Court

The matter before the Court is a "deemed" adversary proceeding pursuant to Fed.R.Bankr.P. 3007. This matter relates to Brummetts' objection to Select's claim, based upon assertions made by a counter-claim that the security interests in property of Brummetts' estate claimed by Select are not sustainable.<sup>2</sup> By order entered on May 24, 2006, the Court granted a "Joint Motion to Join Trustee as Party-Plaintiff", thereby joining the Chapter 13 Trustee as a party defendant with respect to Brummetts' objection to Select's claim #10, and as a counter-claimant with respect to Brummetts' counter-claim. Thus, the parties-in-interest with respect to the matter before the Court are Paul Chael, as Chapter 13 Trustee of the bankruptcy estate of Brummett, Brummett as debtors in case number 05-68690, and Select as the claimant of claim #10.

As stated in the Court's order of May 12, 2006, the record before the Court for determination of the above-designated issues is exclusively comprised of the Stipulation of Facts filed by the parties on June 14, 2006. The submission of a case to the Court based upon a stipulated record means that all evidentiary material to be considered by the Court with respect to the matter before it is encompassed within the stipulated record. Contrary to the assertion of the "Standard of Review" in the "Joint Brief in Support of Debtors' and Trustee's Objection and Counterclaim", the submission of a matter to the Court on a stipulated record does not invoke Fed.R.Bankr.P. 7056/Fed.R.Civ.P. 56. There is no proponent of a motion in this matter as would be the case with respect to a motion for summary judgment. The resolution of factual matters pursuant to Fed.R.Civ.P. 56 – in part by which all inferences must

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<sup>2</sup> It must be emphasized that assertions made by Brummett are not assertions that Select's security interests are avoidable by utilization of the avoidance powers of the Chapter 13 Trustee, or powers of avoidance by the Trustee which may be derivatively asserted by the debtors. There is no issue before the Court as to avoidance of Select's security interests under any section of the Bankruptcy Code, including the provisions of 11 U.S.C. § 544. The issues presented to the Court rather relate to whether the documentation upon which Select relies for its security interests effectuate a mortgage interest in Brummetts' real estate as a matter of law under applicable State law.

be resolved in favor of the non-moving party – do not come into play. All facts necessary for the Court's determination of the matter before it are provided by the parties' stipulation, and based upon the facts presented, the Court can draw inferences and make determinations of fact in the same manner as if facts were presented by an evidentiary trial. This matter is not in any manner governed by the procedural parameters of Fed.R.Civ.P. 56.

The record is further circumscribed by the Court's order entered on November 17, 2006, which struck the two-page exhibit attached to Select's brief filed on September 15, 2006 from the record, and which further provided that the collateral estoppel assertions stated in Section I of that brief would not be considered by the Court.

## II. Issues Before the Court

The issues before the Court in this matter are the following:

1. Are Select Portfolio Services, Inc.'s documents with respect to its asserted mortgage interests in the subject property effective to provide the creditor with an enforceable mortgage interest in that property, even if the rider challenged by the defendants/counterclaimants is determined to be forged?
2. Is the mortgage document by which Select Portfolio Services, Inc. asserts its mortgage interests in the subject property effective to provide the creditor with an enforceable mortgage interest in the subject real estate in relation to the interests of both Frank Edward Brummett and Susan Brummett as tenants by the entireties with respect to the subject property?

## III. Facts Established by the Record

The facts established by the record are the following:

1. At all times relevant to the matter before the Court, Frank Edward Brummett and Susan Brummett have owned the real estate commonly described as 7319 Forest Ridge Drive, Schererville, Indiana, as tenants by the entireties.
2. On or about August 25, 2000, Frank Brummett executed a promissory note with New Century Mortgage Corporation in the principal amount of \$159,000.00; Susan Brummett

did not execute that promissory note.

3. The foregoing promissory note defines Frank Brummett as "borrower".

4. On or about August 25, 2000, Frank Edward Brummett and Susan Brummett signed a mortgage which had certain riders attached to it. Frank and Susan Brummett also executed a Pre-payment Rider Adjustable Rate Loan and an Adjustable Rate Rider.<sup>3</sup>

5. The mortgage, including the Riders designated above, was recorded with the Office of the Lake County Recorder on September 8, 2000, as document number 2000065269.<sup>4</sup>

6. The promissory note described in paragraph 2 above and the mortgage described in paragraph 4 above were subsequently assigned to TCIF, REO I, LLC.; Select is the servicing agent for this entity.

7. At no time did Frank Edward Brummett and Susan Brummett execute a note subject to the terms of the above-described mortgage.

8. The mortgage document describes the promissory note which is secured by the mortgage, as being that of Frank Brummett, and in addition defines Frank Brummett as "borrower".

9. The Brummetts filed their petition for relief under Chapter 13 of the United States Bankruptcy Code on October 15, 2005.

10. On December 30, 2005, Select filed a claim in the amount of \$289,137.29, asserted as a claim secured by the real estate commonly described as 7319 Forest Ridge Drive, Schererville, Indiana.

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<sup>3</sup> There is a dispute as to whether or not Frank Edward Brummett and Susan Brummett signed an Adjustable Rate Rider Addendum attached to the mortgage. The Brummetts assert that their names were forged on this document.

<sup>4</sup> The parties' Stipulation of Facts states that the mortgage was recorded on September 8, 2005; however, the Court takes notice of the documentary record before it, which establishes that the date of 2005 is a scrivener's error, and that the mortgage was actually recorded on September 8, 2000.

11. The promissory note attached to Select's claim #10 is a copy of the original note executed on August 25, 2000. The mortgage and the attached riders which are attached to Select's claim #10 are true copies of the original documents filed with the Lake County Recorder's Office on September 8, 2000, as document number 2000065269.

In its discussion of the issues presented by the parties, the Court will incorporate provisions of the documents established by the parties as those pertinent to this matter.

#### IV. Legal Discussion

The Court regrets the manner in which the Court phrased the issues in its order entered on May 12, 2006. In retrospect, issue number one should have been omitted at this stage of the proceedings, and the issue presently before the Court should have been limited to the mortgage document itself, i.e., whether or not the mortgage considered separately from any obligation it purports to secure is effective to provide a security interest to Select in real estate held by Frank Edward Brummett and Susan Brummett as tenants by the entireties.

The Court has obviously confused the parties by the designation of the issues to be presented at this time. The Court apologizes for that. The confusion created by the Court has led to the arguments advanced by Brummetts and the Trustee in Section IV of their Joint Brief in Support of Debtors' and Trustee's Objection and Counterclaim, by which the debtors and the Trustee apparently argue that if this rider is forged, the entire mortgage becomes invalid. The record before the Court establishes that the "Adjustable Rate Rider Addendum" modifies whatever underlying obligation is secured by the mortgage solely by the terms of Section IV(D) stated in that document, which itself relates only to the interest rate to be charged with respect to the underlying obligation. The parties have stipulated that the underlying obligation purportedly secured by the mortgage is evidenced by documents validly executed, and the issues raised in this matter with respect to the validity of the mortgage to secure any obligation are essentially separate from issues which relate to the extent of the obligations so purportedly

secured.<sup>5</sup>

For the purposes of the decision stated in this order, whether or not the "Adjustable Rate Rider Addendum" was in fact executed by Frank Brummett and Susan Brummett does not affect issues relating to whether or not the mortgage is effective to secure any underlying obligation. This decision focuses on whether or not the mortgage itself is sufficient to provide Select with a security interest in the subject real estate with respect to any obligation which the mortgage purportedly secures.

The focus of the parties' contentions is on the terms of the Mortgage attached as an exhibit to Select's proof of claim.

The Mortgage document opens with the following provision:

(The mortgage) is given on August 25, 2000. The mortgagor is Frank Brummett, married to Susan Brummett.<sup>6</sup>

The document states that the mortgage is "given to New Century Mortgage Corporation". It then continues with the statement that "Borrower owes Lender the principal sum of One Hundred Fifty-Nine Thousand, Two Hundred and No/100 Dollars (U.S. \$159,200.00)". The document then states that:

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on September 1, 2030. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and [illegible in the record] of the Note; (b) the payment of all other sums, with interest,

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<sup>5</sup> This statement has no effect on any issues that may relate to possible forgery of the Rider, including any issues which may be raised as to a failure of a meeting of the minds of the parties as to underlying obligation secured by the mortgage, and the enforceability of that underlying obligation as a result of that possible failure of contractual understanding.

<sup>6</sup> In the document the term "a single man" is crossed through with a horizontal line, and the term "married to Susan Brummett" is inserted. There is no dispute between the parties that this modification of the mortgage was validly initialed by the relevant parties, including Susan Brummett.

advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the following described property located in Lake County, Indiana: [the property commonly described as 7319 Forest Ridge Drive, Schererville, Indiana].

Paragraph 12 of the document states:

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey [illegible in the record] Borrower's interests in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the [illegible in the record] secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agreed to extend, modify, forbear [illegible in the record] make any accommodations with regard to the terms of this Security Instrument or the note without that Borrower's consent.

Paragraph 15 provides that the law governing the document is "the law of the jurisdiction in which the Property is located", which therefore directs that Indiana law is to apply to issues relating to the document.

Paragraph 24 states that an "Adjustable Rate Rider", a "Prepayment Rider" and an "Arm Rider Addendum" are incorporated into and amend and supplement the covenants and agreements of the mortgage. The document contains the acknowledged signature of Frank Brummett, as Borrower. As the debtors have stipulated, the signature of Susan Brummett appears on a signature line at the conclusion of the document, the preface for which is the following:

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

The acknowledgment of the mortgage states that on August 25, 2000, Frank Brummett



and Susan Brummett appeared before a Notary Public and acknowledged the execution of the mortgage.

As the record establishes, the obligation purportedly secured by the mortgage is solely that of Frank Brummett; Susan Brummett is not obligated on the underlying indebtedness purportedly secured by the security interest which may have been granted to New Century Mortgage Corporation. The issue before the Court is whether the Mortgage document is effective to provide a security interest in property held by Frank Edward Brummett and Susan Brummett as tenants by the entireties with respect to any obligation purportedly secured by the mortgage.

As acknowledged by the Brummetts and the Trustee on page 7 of their Joint Brief, a document is to be read within its four corners, and all of the contractual provisions as a whole are to be considered in the interpretation of a document; *Jones v. City of Logansport*, 436 N.E.2d 1138, 1143 (Ind. App. 1992); *R.R. Donnelley & Sons, Co. v. Henry-Williams, Inc.*, 422 N.E.2d 353, 356 (Ind. Ct. App. 1981). Thus, all provisions of the mortgage are to be considered in construing its effect.

Looking first to the terms of the mortgage instrument, the document states that the "mortgagor" is "Frank Brummett, married to Susan Brummett." The only "granting" of a mortgage interest in the real estate described in the instrument is by "Frank Brummett, married to Susan Brummett." Both Frank Brummett and Susan Brummett initialed the change which effected this designation of the mortgagor. It is undisputed that the only party obligated on the indebtedness purportedly secured by the mortgage is Frank Brummett, and that Susan Brummett is not a joint obligee with respect to this indebtedness.

Brummett and the Trustee argue in part that the designation of the mortgagor in the first sentence of the mortgage as "Frank Brummett, married to Susan Brummett", followed by the parenthetical description of the mortgagor as the "(Borrower)" somehow causes the instrument

to be ineffective to mortgage the interests of Susan Brummett as security for the obligation purportedly secured by the mortgage. However, the statements in this first sentence of the mortgage are entirely accurate. The mortgagor is Frank Brummett, and he is the "Borrower" because he alone is obligated on the underlying obligation. It must again be emphasized that the assertions of Brummett and the Trustee do not invoke any issues relating to the validity of the mortgage in relation to third parties, or the imparting of constructive notice to third parties of the encumbrance sought to be effected by the mortgage document. As Brummett and the Trustee state on page 10 of their Joint Brief in Support of Debtors' and Trustee's Objection and Counterclaim, the "Court must enforce this unambiguous contract as written, thereby leaving the parties to the positions for which they have bargained." The first sentence of the mortgage is entirely consistent with the parties' obvious intent to provide New Century with a security interest in property held by Frank and Susan Brummett as tenants by the entireties to secure the several indebtedness of Frank Brummett. The Brummetts and the Trustee appear to contend that despite her fingerprints being all over this document, Susan Brummett intended to wipe her fingerprints clean before she implanted evidence of her participation, and thus that her evident involvement is an unintended fact. Lesser evidence has led to the killer in "CSI Miami". To contend that this document on its face, by the use of the term "Borrower" in its opening sentence as referring to only Frank Brummett, does not evidence Susan's Brummett's consent to its terms as a mortgage of tenancy by the entireties property for the several debt of her husband – or that New Horizon did not so intend – is not sustainable as a valid construction of the mortgage instrument.

The signature line on which Susan Brummett signed the mortgage has underneath it the designation "Borrower". The mortgage document itself specifically provides in paragraph 12 for the circumstance of this signature by stating:

Any Borrower who co-signs this Security Instrument but does not

execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey [illegible in the record] Borrower's interests in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the [illegible in the record] secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agreed to extend, modify, forbear [illegible in the record] make any accommodations with regard to the terms of this Security Instrument or the note without that Borrower's consent. (emphasis supplied)

The foregoing clearly provides that a person in the position of Susan Brummett is not obligated on the underlying indebtedness secured by the mortgage, and that by her signature she is merely consenting to providing the mortgagee with a security interest in the subject real estate to secure an indebtedness upon which she is not personally liable. There is no ambiguity between the description of the "Borrower" in the first sentence of the mortgage as being Frank Brummett, and the designation of Susan Brummett as a "borrower" under her signature line.

The principal contention in Brummett's and the Trustee's brief is that without Susan Brummett being designated as the "Mortgagor" in the mortgage and her "granting" of a mortgage in the opening provision of the document, the mortgage is invalid to provide for a security interest in tenancy by the entirety property. That is an erroneous interpretation of Indiana law. First, even if it were necessary to provide a "granting" by Susan Brummett, paragraph 12 of the document provides that she co-signed the mortgage "to mortgage, grant and convey [her] interest in the property under the terms [of the mortgage]". That would end the discussion as to the intent of the parties right there, but let's go further and address the urban myth that the granting clause of a mortgage is the only manner in which tenancy by the entirety property may be "pledged" as collateral for the individual debt of only one spouse.

IC 32-29-1-5 provides a statutory form for a mortgage, stating as follows:

**32-29-1-5 Form; Mortgage**

Sec. 5. A mortgage of land that is:

(1) worded in substance as "A.B. mortgages and warrants to C.D." (here describe the premises) "to secure the repayment of" (here recite the sum for which the mortgage is granted, or the

notes or other evidences of debt, or a description of the debt sought to be secured, and the date of the repayment); and

(2) dated and signed, sealed, and acknowledged by the grantor; is a good and sufficient mortgage to the grantee and the grantee's heirs, assigns executors, and administrators, with warranty from the grantor (as defined in IC 32-17-1-1) and the grantor's legal representatives of perfect title in the grantor and against all previous encumbrances. However, if in the mortgage form the words "and warrant" are omitted, the mortgage is good but without warranty.

In this case, Frank Brummett mortgaged the property to New Horizon in the first sentence of the document, and thus the first section of the foregoing statute has been satisfied. Section (2) of the statute has been satisfied with respect to both Frank and Susan Brummett, as well. The issue is whether the instrument is effective to provide New Horizon with an interest in Susan Brummett's tenancy by the entirety interest in the property, not whether the document is effective as a mortgage under IC 32-29-1-5.

The debtors and the Trustee appear to contend that the only effective way to provide that property held by tenancy by the entirety may be made the subject of a mortgage to secure the indebtedness of only one of the marital partners is to provide that the non-obligated marital partner is designated as a "mortgagor" in the "granting clause" of the mortgage instrument.

This is not Indiana law. As stated by this Court in *In re Kuhn*, 322 B.R. 377, 384 (Bankr.

N.D.Ind. 2005):

The characteristics of tenancy by the entirety under Indiana law were described as follows in *In re Hunter*, 970 F.2d 299, 301 (7<sup>th</sup> Cir. 1992):

Indiana continues to recognize the common law form of marital property ownership-tenancy by the entirety. It is based upon the ancient common law principle that, upon marriage, each spouse loses his or her individual identity, and the two people become one entity. This entity, rather than either spouse, holds title to entirety property. *State v. Union Bank & Trust Co.*, 177 Ind. App. 632, 380 N.E.2d 1279, 1280 (1978) ("The law in this State is clear that property held in a tenancy by the entirety is held by a single legal entity created by . . . unity of husband and wife"). While neither spouse claims title individually, each

spouse has an undivided interest in the whole. *Heffner v. White*, 113 Ind. App. 296, 45 N.E.2d 342, 346 (1942) (“[A] tenancy by the entirety is vested in two persons only, who in law are regarded as only one and each of whom becomes seised of the estate as a whole.”) Neither spouse can transfer or encumber the property by himself or herself; it take a joint act to affect the property. *Union Bank*, 380 N.E.2d at 1280 (“[O]ne spouse cannot convey or encumber the property so held without the consent of the other.”). (emphasis supplied)<sup>7</sup>

Under Indiana law, it is the consent of the non-obligated marital partner to the creation of a security interest in tenancy by the entirety property that is relevant, as contrasted to that non-obligated party's formal granting of a mortgage interest in a mortgage document; See, *Noble County Bank, et al. v. Waterhouse*, Ind. App., 163 N.E. 119 (1928). In *Beneficial Mortgage Company of Indiana v. Powers*, Ind. App., 550 N.E.2d 793 (1990), the Court discussed whether or not an unauthorized mortgaging of tenancy by the entirety real estate by one of the marital partners could be ratified by the non-mortgaging partner. The Court held that ratification in this circumstance was a valid theory, but that the evidence in the case failed to establish ratification by the non-mortgaging partner. Thus, between the parties to the mortgage, one marital partner's initial joining in the encumbrance of a property enacted only by one marital partner is not vital to the effectiveness of the encumbrance. As stated in *McIntosh v. Turner*, Ind. App., 486 N.E.2d 565, 566 (1985):

Merely owning property as tenants by the entirety does not ordinarily bind one spouse when the other has contracted with a third person, unless the contracting spouse is authorized, or the non-contracting spouse ratifies the act. *Bayes v. Isenberg* (1981), Ind. App., 429 N.E.2d 654, 659.

See, *Wienke v. Lynch*, Ind. App., 407 N.E. 280, 283 [fn. 3] (1980) [a unilateral conveyance of tenancy by the entirety property is not void, but rather is “inoperable” until affirmed by the

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<sup>7</sup> Brummett and the Trustee have acknowledge the validity of this statement of the law in footnote 2 in paragraph 6 of their Joint Brief.

nonconveying spouse].

The law in Indiana is that a marital partner not obligated on an underlying indebtedness must consent to the obligated partner's grant of a mortgage in tenancy by the entirety property to secure an indebtedness of only one of the marital partners. The law of Indiana is not that the non-obligated marital partner must be a co-grantor in the mortgage. The record in this case absolutely establishes that Susan Brummett consented to the mortgage attached to claim #10, and her consent to the security interest of New Century Mortgage Corporation in the property described in the mortgage is manifestly evidenced by her signature on the mortgage document. There is no ambiguity in the document. The obligation secured by the mortgage is clearly solely that of Frank Brummett, as the parties have stipulated. Paragraph 12 of the mortgage provides for the exact circumstance evidenced by this record: an obligation of one marital partner with respect to which the non-obligated marital partner consents to the creation of a security interest (mortgage) in real estate held in tenancy by the entirety to secure the obligation of only one marital partner. By her signature on the mortgage document, Susan Brummett clearly expressed her intent to be bound by paragraph 12 of the mortgage and consented to granting and providing New Century Mortgage Corporation with a mortgage interest in the real property commonly described as 7319 Forest Ridge Drive, Schererville, Indiana, in order to secure an obligation which was solely that of her husband Frank Edward Brummett.

The Court finds that the obligation of Frank Edward Brummett which is the subject of claim #10 is secured by a security interest (mortgage interest) in the property commonly described as 7319 Forest Ridge Drive, Schererville, Indiana. Whether or not the underlying obligation includes the provisions of the "Adjustable Rate Rider Addendum", or is enforceable as an obligation if the signatures on that Rider were forged, are issues for another day.

IT IS ORDERED, ADJUDGED AND DECREED that the obligation of Frank Edward Brummett to New Century Mortgage Corporation and/or its assigns is secured by a security

interest (mortgage interest) in real property described as 7319 Forest Ridge Drive, Schererville, Indiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that whether or not the obligation sought to be secured by the mortgage encompasses and includes the modifications stated in the "Adjustable Rate Rider Addendum" attached to claim #10, and whether or not the underlying obligation is enforceable at all if the foregoing Rider was not consented to by Frank Brummett and Susan Brummett, will be the subject of further proceedings before the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a scheduling conference will be held on **April 25, 2007, at 11:00 A.M.** to determine the manner in which further proceedings will be conducted to determine the extent to which the "Adjustable Rate Rider Addendum" is effective with respect to the underlying obligation of Frank Edward Brummett.

Dated at Hammond, Indiana on March 14, 2007.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtors, Attorney for Debtors  
Trustee, US Trustee  
Attorney for Creditor